

STATE OF MICHIGAN  
COURT OF APPEALS

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DONALD G. PETERSON,

Plaintiff/Counter-Defendant-  
Appellant,

v

BRIAN K. LOKERS and BRENDA MARIA  
BRUNK, a/k/a BRENDA MARIA LOKERS,

Defendants/Counter-Plaintiffs-  
Appellees.

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UNPUBLISHED

May 23, 2006

No. 265021

Baraga Circuit Court

LC No. 05-005419-CK

Before: Sawyer, P.J., and Kelly and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's opinion and order quieting title in defendants. We reverse and remand for entry of judgment in favor of plaintiff.

This is a property dispute to determine title to a residential premises in Baraga, Michigan. On May 28, 1986, Jack Peterson, plaintiff's deceased brother and predecessor in title, entered into a lease with option with defendants for the premises. The lease was for a term of eighty-four months (seven years), and it gave defendants the option to purchase the premises for \$10,000 at any time during the term. Defendants were credited against the option price for their rent payments, but with a 10% interest rate being applied to the principal balance. Defendants have occupied the premises since 1986, when they entered into the lease.

Plaintiff acquired title to the premises in January 2004 through his brother's estate, and he initiated proceedings to evict defendants, asserting that defendants' lease had expired in 1993 and that they had been holding over since then and that, therefore, plaintiff was entitled to possession of the premises. Defendants filed a counter-claim, claiming title to the premises under an unrecorded December 1, 1993, warranty deed from Jack Peterson and requesting that title be quieted in them. The matter proceeded to bench trial, and the trial court held that plaintiff is estopped by the doctrine of laches from enforcing any rights he may have had to the premises, and it quieted title to the premises in favor of defendants.

On appeal, plaintiff argues that the trial court's *sua sponte* application of the doctrine of laches was erroneous. We agree. We review a trial court's equitable decisions de novo, but its

findings of fact supporting an equitable decision are reviewed for clear error. *Yankee Springs Twp v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004).

The doctrine of laches is an affirmative defense that is waived if it is not raised in the defendant's responsive pleading or by motion. *Rowry v Univ of Michigan*, 441 Mich 1, 12; 490 NW2d 305 (1992); *Badon v Gen Motors Corp*, 188 Mich App 430, 436; 470 NW2d 436 (1991). The rationale behind waiving affirmative defenses that are not properly pleaded is to prevent the adverse party from being taken by surprise at trial. *Horvath v Delida*, 213 Mich App 620, 630; 540 NW2d 760 (1995). Here, defendants did not raise the doctrine of laches at any point in the proceedings, so the affirmative defense of laches was waived. Accordingly, the trial court should not revive the waived affirmative defense *sua sponte*. For the same reason that it is not fair for parties to raise affirmative defenses without notice—because there is no opportunity to defend against it—it is also not fair for a trial court to do so. Therefore, we conclude that the trial court erred in applying the doctrine of laches *sua sponte* in this case.

Further, because we conclude that the doctrine of laches is not applicable *sua sponte*, we reverse and remand this case for entry of an order granting plaintiff possession of the premises. In its opinion and order, the trial court refers to the parties' agreement as a lease with option; therefore, it rejected defendants' argument that the agreement should be interpreted as a land contract. The trial court further found that defendants could not establish that they paid the entire option price within the lease term. An option is a mere offer, the acceptance of which must be made within the time allowed and in minute compliance with its terms or the optionee's rights will be lost. *LeBaron Homes, Inc v Pontiac Housing Fund, Inc*, 319 Mich 310, 315; 29 NW2d 704 (1947). Substantial compliance with the terms of an option is insufficient. *Id.* Therefore, because defendants could not show that they timely paid the option price, their lease payments converted into rents and they hold no title, equitable or otherwise, to the premises. Accordingly, plaintiff is entitled to possession of the premises.

In light of our holding, we decline to address the other arguments raised by plaintiff on appeal.

Reversed and remanded for entry of an order granting plaintiff possession of the premises. We do not retain jurisdiction.

/s/ David H. Sawyer  
/s/ Kirsten Frank Kelly  
/s/ Alton T. Davis